



# Commonwealth of Massachusetts State Ethics Commission

One Ashburton Place, Room 619, Boston, MA, 02108  
phone: 617-727-0060, fax: 617-723-5851



SUFFOLK, ss

COMMISSION ADJUDICATORY  
DOCKET NO. 05-0002

IN THE MATTER  
OF  
KEVIN F. CAPALBO

## DISPOSITION AGREEMENT

The State Ethics Commission and Kevin F. Capalbo enter into this Disposition Agreement pursuant to Section 5 of the Commission's *Enforcement Procedures*. This Agreement constitutes a consented-to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, § 4(j).

On December 16, 2003, the Commission initiated, pursuant to G.L. c. 268B, § 4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Capalbo. The Commission has concluded its inquiry and, on June 2, 2005, found reasonable cause to believe that Capalbo violated G.L. c. 268A.

The Commission and Capalbo now agree to the following findings of fact and conclusions of law.

### Findings of Fact

1. At the time relevant, Capalbo was a member of the Shrewsbury Planning Board, having begun his service on the board in June 2002.
2. Between June 2002 and October 3, 2002, the Shrewsbury Planning Board conducted a public hearing on a 15-lot subdivision known as Park Grove Farm.
3. On the morning of October 3, 2002, Capalbo's wife was driving her car through a parking lot in Shrewsbury when she hit a metal pipe. The parking lot was unpaved, and the pipe was twisted and not easily visible.
4. The parking lot in question was owned by Robert Cole, one of the developers of the Park Grove Farm subdivision.
5. On the evening of October 3, 2002, Cole appeared before the Planning Board for the continued public hearing on the Park Grove Farm subdivision. After the hearing closed, the board, including Capalbo, voted to approve the subdivision plan, subject to 28 conditions. This meant that the Planning Board would continue to supervise and monitor the construction of the subdivision throughout its construction to ensure compliance with the imposed conditions.
6. Capalbo did not learn of the damage to his wife's car until after the October 3, 2002 Planning Board meeting. Upon learning of the damage, Capalbo reported the incident to his insurance company, at which time he was informed that his deductible was \$500.
7. After calling the insurance company, Capalbo called Cole and asked him to pay the \$500 deductible. Cole declined to pay the money and invited Capalbo to sue him. Capalbo told Cole that he wasn't looking to sue, that he just wanted to have his wife's car fixed. He stated that Cole should take

responsibility for the deductible because the damage had occurred on Cole's property. They ended their conversation without reaching an agreement.

8. Capalbo called Cole a few weeks later to discuss the issue further. Cole agreed to pay the \$500 for the damage to Capalbo's wife's car.

9. The insurance company later provided Capalbo with a check for \$383.38, representing the difference between the cost to repair the damage (\$883.38) and Capalbo's \$500 deductible.

10. On November 2, 2002, Capalbo sent Cole a letter requesting that Cole pay his auto mechanic the \$500 directly. Attached to the letter was an October 30, 2002 invoice from the auto mechanic indicating a balance due of \$500.

11. In the meantime, there had been a number of complaints from neighbors regarding the work being done at the subdivision site and the condition of the street. Capalbo was aware of these complaints.

12. Despite Cole's agreement to pay Capalbo's auto mechanic, the auto mechanic informed Capalbo shortly after November 2, 2002 that Cole had not yet paid the outstanding \$500 balance. Capalbo informed the auto mechanic that he would contact Cole to inquire as to the payment status.

13. Over the course of the following week, Capalbo attempted, although unsuccessfully, to contact Cole by telephone. Unable to reach Cole by telephone, Capalbo visited the Park Grove Farm subdivision site on or about November 8, 2002 to speak with Cole personally. Cole was not at the site when Capalbo showed up. Capalbo spoke with Cole's foreman, asked the foreman to have Cole call him, and gave the foreman his contact information.

14. Although, at the time, the Planning Board chair encouraged the Planning Board members to visit subdivision sites to familiarize themselves with the state of the developments, Capalbo did not go to the site as a Planning Board member. Rather, Capalbo went to the site to talk to Cole about the \$500, which Cole had agreed to pay but had not yet paid.

15. The foreman informed Cole of Capalbo's visit to the site and his request that Cole call him.

16. On November 19, 2002, Cole paid Capalbo's auto mechanic \$500.

17. According to Cole, he paid Capalbo the \$500 because he felt that, as a result of all of his contacts with Capalbo—especially Capalbo's visit to the subdivision on November 8<sup>th</sup>—Capalbo was linking his request for the payment to his role as a Planning Board member vis-à-vis the Planning Board's oversight of the outstanding subdivision issues.

18. Capalbo never stated to Cole that Capalbo's actions as a Planning Board member were dependent upon Cole's paying him the \$500.

19. Thereafter, Capalbo continued to participate as a Planning Board member in matters concerning the Park Grove Farm subdivision.

20. The Commission received no evidence that Capalbo as a Planning Board member ever showed favor or disfavor towards Cole and/or the Park Grove Subdivision.

### **Conclusions of Law**

21. As a Shrewsbury Planning Board member, Capalbo was a municipal employee within the meaning of G.L. c. 268A.

### *Section 23(b)(3)*

22. Section 23(b)(3) prohibits a municipal employee from, knowingly or with reason to know, acting in a manner which would cause a reasonable person, knowing all of the facts, to conclude that anyone can improperly influence or unduly enjoy that person's favor in the performance of his official duties. This subsection goes on to provide that the appearance of impropriety can be avoided if the public employee discloses in writing to his appointing authority all of the relevant circumstances which would otherwise create the appearance of conflict.

23. After Capalbo's wife had damaged her car and Capalbo had asked Cole to pay the \$500 deductible, Capalbo continued to participate as a Planning Board member in matters concerning the Park Grove Farm subdivision.

24. When he participated in these matters, Capalbo knew or had reason to know that he was creating an appearance of impropriety by performing his Planning Board duties regarding the subdivision after having asked Cole for the \$500 deductible.

25. The Commission finds this appearance of impropriety troubling where Capalbo visited the subdivision site to talk to Cole about the \$500 while having oversight duties as a Planning Board member regarding the subdivision.

26. Thus, Capalbo knew or had reason to know that he was acting in a manner which would cause a reasonable person, knowing all of the relevant facts, to conclude that if Cole agreed to and paid Capalbo's insurance deductible, Cole could improperly influence or unduly enjoy Capalbo's favor in the performance of Capalbo's official duties relating to the subdivision. Thus, Capalbo violated § 23(b)(3).

27. Capalbo did not file any written disclosure to dispel this appearance of impropriety.<sup>1</sup>

### **Resolution**

In view of the foregoing violations of G.L. c. 268A by Capalbo, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Capalbo:

- (1) that Capalbo pay to the Commission the sum of \$1,000 as a civil penalty for violating § 23(b)(3) of G.L. c. 268A; and
- (2) that Capalbo waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

**DATE:** August 1, 2005

---

<sup>1</sup> According to Capalbo, he verbally disclosed his wife's car accident to the Planning Board chairman and was told by the chairman that the issue was a private matter. The chairman, however, would not confirm that this conversation occurred.